

**MATTHEW G. McHENRY, OSB# 043571**

Levine & McHenry LLC  
1050 SW 6th Ave Ste 1414  
Portland OR 97204  
(503)-546-3927  
E-Mail: matthew@levinemchenry.com

**AMANDA A. THIBEAULT, OSB #132913**

Alvarez Thibeault, LLC  
330 NE Lincoln Street, Suite 100  
Hillsboro, Oregon 97124  
(503) 640-0708  
Facsimile (503) 214-5436  
amanda@aatlegal.com

Attorneys for Defendant Tony Daniel Klein

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

**UNITED STATES OF AMERICA,**

PLAINTIFF,

vs.

**TONY DANIEL KLEIN,**

DEFENDANT.

**No. 3:22-CR-00084-SI-1**

**DECLARATION OF RUSS BRETAN IN  
SUPPORT OF MOTION TO CONTINUE**

I, Russ Bretan, declare:

1. I am the owner and president of Court Discovery Management (CDM), a litigation support company in Oregon.

2. Court Discovery Management has extensive experience processing, organizing, and maintaining searchable databases of discovery produced by the United States Attorney in federal criminal cases charged in the District of Oregon.
3. On March 28, 2022 the government in this case produced Volume 1 (Bates\_US00000001– Bates\_US00092262) in a non-standard format and with the majority of native files “missing”, making this production unusable by defense counsel.
4. In April 2022, the defense team in *United States v. Tony Klein*, 3:22-cr-00084-SI-1, engaged CDM for assistance with managing the discovery and communicating with the government to request a useable production format and the missing files.

#### **FIRST ISSUE WITH VOLUME 1 PRODUCTION**

5. After downloading Volume 1 from USAfx in May 2022, it was determined that the majority of the NATIVES folders were empty, as shown by the screenshot in the report attached to this declaration.
6. The same screenshot indicates that files were being edited or uploaded between May 29, 2022 and May 31, 2022, well past March 28, 2022, the date the Volume 01 cover letter indicated the discovery was produced.

#### **SECOND ISSUE WITH VOLUME 1 PRODUCTION**

7. After successfully downloading the rest of Volume 01, we saw that the IMAGES folder contained 52 zipped containers, each of which needed to be manually uncompressed before viewing the contents within. Once completed, it was

determined that the IMAGES folder contained 92,262 single-page TIFF or JPG files.

8. The standard format of discovery produced from the US Attorney's Office for criminal cases in the District of Oregon is multi-page PDF images, not single-page TIFF/JPG images.
9. Single-page TIFF/JPG productions require the use of sophisticated discovery review software in order to "open" and review the discovery files. There are many reasons for this. TIFF/JPG files contain no computer readable text and therefore are not keyword searchable by defense counsel. Furthermore, opening 92,262 files would be extremely time and cost prohibitive. Without specialized software, there is no indication of where one "document" ends and another begins.

### **THIRD ISSUE WITH VOLUME 1 PRODUCTION**

10. The "index" that was provided with Volume 1 did not include a 'File Path' field, which is normally delivered in the District of Oregon, especially for large productions such as this. The data contained in this field can greatly aid the defense team in locating specific types of discovery and in organizing the discovery into like-documents (such as search warrants, law enforcement reports, etc.).
11. I advised Mr. McHenry on these issues and suggested he relate them to the prosecution. On June 9, 2022, Annabelle Rice (Paralegal Specialist, U.S. Department of Justice Civil Rights Division, Criminal Section) reached out to me by phone. In subsequent emails and telephone conversations with Ms. Rice, I

requested, on behalf of the defense, the missing native files, a multi-page PDF image production, and 'File Path' data to resolve the issues in the first production of Volume 01.

12. On June 28, 2022, I received a new USAfx link to download 'Volume 01 Supplemental' production.

#### **FOURTH ISSUE WITH VOLUME 1 PRODUCTION**

13. It was quickly determined that, rather than a complete reproduction in the requested format, the supplemental production contained only new native files (6,302 files) missing from the original production. Multi-page PDFs were not produced as requested, nor File Path data.
14. I advised defense counsel that Volume 1 would need to be processed into discovery review software due to the single-page TIFF/JPG image format of production before it could be reviewed by defense.

#### **FIFTH ISSUE WITH VOLUME 1 PRODUCTION**

15. Because the government elected to produce only missing native files in Volume 01 Supplemental, rather than producing all images, natives, and text files together, the load file from the original Volume 01 needed to be merged with the load file from the Supplemental production. Load files are akin to an index, that can be read by discovery review software. The load file from the original Volume 01 referenced only the single-page images, text files, and a few native files. Volume 01 Supplemental load files referenced only the newly delivered native files. These

load files, therefore, needed to be manually merged in order to generate a single load file that had any references to missing files removed.

### **SIXTH ISSUE WITH VOLUME 1 PRODUCTION**

16. It was my understanding that the subsequent production of Volume 01 would contain all native files. However, this was not the case. Volume 01 load file contained 6,558 rows of data, representing 6,558 files produced. Volume 01 Supplemental load file contained 6,298 rows, representing that only 6,298 native files were produced, indicating 260 less files in the latter production. This required further “merging” of particular native files, verifying that duplicates were not being created.

17. Around June 29, 2022, after completing this work to remediate all of the above issues, Volume 01 was successfully processed into a review database to allow defense counsel to review the discovery appropriately.

18. Given the issues with the discovery produced, it was functionally impossible for the defense team to conduct any meaningful review of the material produced in Volume 01 until around June 29, 2022.

19. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief and that this declaration was executed on 10th day of March, 2023.

/s/ Russ Bretan  
Russ Bretan



March 10, 2023

**RE: Klein – government productions**
















On March 28, 2022 the government produced Volume 1 (Bates\_US00000001–Bates\_US00092262) in a non-standard format and with the majority of native files “missing”, making this production unusable by defense counsel.

Mr. McHenry engaged my firm, Court Discovery Management, towards the end of April 2022 for assistance with managing the discovery and communicating with the government to request a useable production format and the missing files.

**First Issue with Volume 1 Production:**

After downloading Volume 1 from USAfx in May 2022, it was determined that the majority of the NATIVES folders were empty.

See screenshot:

<div> <div>Q</div> <div>Search Files and Folders</div> <div> <div></div> <div></div> </div> </div>		
<div> <div></div> <div>&gt; U.S. v. Klein, Tony &gt; USPROD001 &gt; NATIVES</div> <div> <div>...</div> <div></div> </div> </div>		
Name ^	Updated	Size
 NATIVE001	May 29, 2022 by Someone	0 Files
 NATIVE003	May 29, 2022 by Someone	0 Files
 NATIVE004	May 28, 2022 by Someone	0 Files
 NATIVE005	Mar 28, 2022 by Kopsidas...	5 Files
 NATIVE009	May 29, 2022 by Someone	0 Files
 NATIVE010	May 28, 2022 by Someone	2 Files
 NATIVE024	May 29, 2022 by Someone	0 Files
 NATIVE029	May 29, 2022 by Someone	0 Files
 NATIVE030	Mar 28, 2022 by Kopsidas...	3 Files
 NATIVE031	May 31, 2022 by Someone	0 Files
 NATIVE036	May 28, 2022 by Someone	0 Files
 NATIVE037	May 28, 2022 by Someone	1 File
 NATIVE039	May 30, 2022 by Someone	2 Files
 NATIVE040	May 29, 2022 by Someone	0 Files
 NATIVE043	May 29, 2022 by Someone	0 Files

This also indicates that files were being edited or uploaded between May 29, 2022 and May 31, 2022 even though the government indicated in its Volume 01 cover letter that the discovery was uploaded to USAfx on March 28, 2022.

## Second Issue with Volume 01:

After successfully downloading the rest of Volume 01, we saw that the IMAGES folder contained 52 zipped containers, each of which needed to be manually un-compressed before viewing the contents within. Once completed, it was determined that the IMAGES folder contained 92,262 single-page TIFF or JPG files.

The standard format of discovery produced from the US Attorney's Office for criminal cases in the District of Oregon is multi-page PDF images, not single-page TIFF/JPG images.

Single-page TIFF/JPG productions require the use of sophisticated discovery review software in order to "open" and review the discovery files. There are many reasons for this. TIFF/JPG files contain no computer readable text and therefore are not keyword searchable by defense

counsel. Furthermore, opening 92,262 files would be extremely time and cost prohibitive. Without specialized software, there is no indication of where one “document” ends and another begins.

### **Third Issue with Volume 01:**

The “index” that was provided with Volume 1 did not include a ‘File Path’ field, which is normally delivered in the District of Oregon, especially for large productions such as this. The data contained in this field can greatly aid the defense team in locating specific types of discovery and in organizing the discovery into like-documents (such as search warrants, law enforcement reports, etc.).

After advising Mr. McHenry of these issues, I believe that he spoke with the prosecuting attorneys. On June 9, 2022, Annabelle Rice (Paralegal Specialist, U.S. Department of Justice Civil Rights Division, Criminal Section) reached out to me by phone. In subsequent emails and telephone conversations with Ms. Rice, I requested, on behalf of the defense, the missing native files, a multi-page PDF image production, and ‘File Path’ data to resolve the issues in the first production of Volume 01.

On June 28, 2022, I received a new USAfx link to download ‘Volume 01 Supplemental’ production.

### **Fourth Issue with Volume 01:**

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I advised defense counsel that Volume 1 would need to be processed into discovery review software due to the single-page TIFF/JPG image format of production before it could be reviewed by defense.

### **Fifth Issue with Volume 01:**

Because the government elected to produce only missing native files in Volume 01 Supplemental, rather than producing all images, natives, and text files together, the load file from the original Volume 01 needed to be merged with the load file from the Supplemental production.

Load files are akin to an index, that can be read by discovery review software. The load file from the original Volume 01 referenced only the single-page images, text files, and a few native files. Volume 01 Supplemental load files referenced only the newly delivered native files.

These load files, therefore, needed to be manually merged in order to generate a single load file that had any references to missing files removed.



**Sixth Issue with Volume 01:**

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This required further “merging” of particular native files, verifying that duplicates were not being created.

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